

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

PAUL WARNER and)	
BROTHERS OF THE WHEEL M.C.)	
EXECUTIVE COUNCIL, INC.)	Cancellation No.: 92059164
Petitioner,)	
)	
v.)	Mark: BROTHERS OF THE WHEEL
)	
GERALD R. MOLLOHAN and)	Registration No.: 4299480
BROTHERS OF THE WHEEL)	Date Registered: March 05, 2013
Respondent)	

RESPONDENTS' BRIEF AND MOTION TO STRIKE BRIEF ON MOTION

INTRODUCTION

COMES NOW Registrant and Respondent, Gerald R. Mollohan, Pro Se *et al*, owner of Trademark Registration Number 4299480 for "BROTHERS OF THE WHEEL", Classification 026 EMBROIDERED PATCHES to hereby notify the Board (TTAB) of his "RESPONDENTS' BRIEF AND MOTION TO STRIKE BRIEF ON MOTION."

The petitioner abandoned his trademark, failed to provide proof that his petition of cancellation was served on the registrant and respondent per Trademark Trial and Appeal Board Manual of Procedure (TBMP), Trademark Laws. Further, Attorney RICHARD J. LINDROTH is not qualified nor is he authorized to represent anyone before this most honorable Court/Board per 37 CFR § 11.7 of Trademark Regulations, which stipulate that a licensed attorney must "register" and complete, and examination to qualify to practice before this honorable Court/Board. Additionally, Petitioner Warner is not authorized nor qualified to represent a

Corporation in any legal matter and thus, this matter should be denied and the petitioner's trademark 2926222 should be cancelled immediately.

FACTS

- 1) Petitioner Paul Warner was aware of the facts and laws when he filed this petition for cancellation and that he is not qualified to appear or practice Trademark Law before the Trademark Trial And Appeal Board (TTAB) or any Court for that matter, and represent a corporation per Trademark Trial And Appeal Board Manual Of Procedure (TBMP) Latest edition, 37 CFR § 2.19(b), § 10.40, § 11.14 and other applicable rules of this most honorable Court. Both corporate officers and petitioners PAUL D. WARNER (President), RAY EDWIN CAREY (Vice President) and their enterprise "BROTHERS OF THE WHEEL M.C. EXECUTIVE COUNCIL, INC." are named defendants in Civil Action 2:14-cv-15592 filed 04/30/14 in The U.S. District Court for The Southern District of West Virginia at Charleston and defending the following counts; "NAKED LICENSING" and "TRADEMARK CANCELLATION". The Plaintiff in Civil Action 2:14-cv-15592, Frank J. Visconi, has filed a Motion for Default Judgment in that matter and when successful, the petitioner's trademark number 2926222 will be cancelled. Petitioner Paul Warner and his enterprise (Executive Council) have abandoned trademark number 2926222 per complaints filed in U.S. District Court and the overwhelming evidence of "Naked Licensing Doctrine" filed by Mr. Visconi in Civil Action 2:14-cv-15592. This Court should agree and deny this petition to cancel. Per evidence now in U.S. District Court records and motions, petitioner in this matter is likely not to own any trademark at all. It is likely that his one trademark number 2926222 will be cancelled in

U.S. District Court in Charleston, West Virginia in Civil Action 2:14-cv-15592 and Civil Action 2:13-cv-32251 filed 12/16/2013. Petitioners Trademark Number 2926222 is pending cancellation in the Trademark Trial and Appeal Board Cancellation Number 92059292 and Number 92056674.

- 2) Petitioner Paul Warner and Attorney Richard J. Lindroth have filed their “PETITIONERS’ RESPONSE TO MOTION TO DISMISS, MOTION TO CONSOLIDATE WITH PENDING CASE AND NOTICE OF APPEARANCE OF COUNSEL” PROSECUTIN HISTORY #8 – 06/19/2014 and PROSECUTION HISTORY #9 - 06/20/2014 knowing that it will be obvious to all that the petitioners commenced these proceedings before this Court merely for the purpose of harassing or maliciously injuring the respondents per 37 CFR § 10.40 (b) (1) (2) (3) (c). Additionally prosecution history #8 and #9 appear to be identical in content.
- 3) Tyrone Craven, Lead Paralegal Specialist issued Letter and Mailed: May 31, 2014 Stating that “Proceedings are suspended pending disposition of respondent’s motion to dismiss (filed May 14, 2014)”
- 4) Attorney RICHARD J. LINDROTH is not qualified nor is he authorized to represent anyone before this most honorable Court/Board per 37 CFR § 11.7 of Trademark Regulations, which stipulate that a licensed attorney must “register” and complete, and examination to qualify to practice before this honorable Court/Board. Additionally, Petitioner Warner is not authorized nor qualified to represent a Corporation in any legal matter.
- 5) Subject to the provision of Fed. R. Civ. P. 11, a party is entitled to offer in its brief any argument it feels will be to its advantage.

ARGUMENT

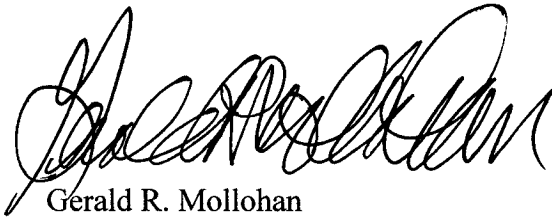
The petitioners have provided fraudulent affidavits and false information to the Courts and false information, fabricated and frivolous details to the USPTO and TTAB. Additionally IN PROCEEDING 92059164 prosecution history #8 filing date 06/19/2014 **appears to be identical** to prosecution history #9 filing date 06/20/2014 and both (#8 and #9 “Opposition/Response to Motion”) appear to respondent to be fabricated, frivolous and without merit, filed by Richard J. Lindroth (Filers Name and Signature) and not qualified to appear before this most honorable Court.

CONCLUSION

For the foregoing reasons, Registrant and Respondents’ urge and request that this most honorable Court Strike document prosecution history #8 filing date 06/19/2014 titled “PETITIONERS’ RESPONSE TO MOTION TO DISMISS, MOTION TO CONSOLIDATE WITH PENDING CASE AND NOTICE OF APPEARANCE OF COUNSEL”(ESTTA610833) and strike document prosecution history #9 filing date 06/20/2014 titled “PETITIONERS’ AMENDED RESPONSE TO MOTION TO DISMISS, MOTION TO CONSOLIDATE WITH PENDING CASE AND NOTICE OF APPEARANCE OF COUNSEL”(ESTTA611181). Both #8 and #9 filed for the petitioners by Richard J. Lindroth (FILERS NAME AND SIGNATURE.) Attorney RICHARD J. LINDROTH is not qualified nor is he authorized to represent anyone before this most honorable Court/Board per 37 CFR § 11.7 of Trademark Regulations, which stipulate that a licensed attorney must “register” and complete, and

examination to qualify to practice before this honorable Court/Board. Further, petitioners trademark number 2926222 should be cancelled immediately.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gerald R. Mollohan', written in a cursive style.

Gerald R. Mollohan
Brothers of the Wheel
P.O. Box 507
St.Albans, West Virginia 25177-0507
Pro Se, *et al*
Registrant and Respondent

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2014, a copy of the foregoing

**“RESPONDENTS’ BRIEF AND MOTION TO STRIKE BRIEF ON
MOTION”**

was sent by U.S. Mail, postage prepaid to:
PAUL WARNER and
BROTHERS OF THE WHEEL M.C. EXECUTIVE COUNCIL, INC.
PO BOX 782
MADISON, WEST VIRGINIA 25130
UNITED STATES

and

RICHARD J. LINDROTH
PO BOX 331
ELEANOR, WV 25070

A handwritten signature in black ink, appearing to read "Gerald R. Mollohan", written over a horizontal line.

GERALD R. MOLLOHAN, Pro Se et al
BROTHERS OF THE WHEEL
PO BOX 507
ST. ALBANS, WEST VIRGINIA 25177-0507
United States of America

**Trademark Trial and Appeal Board
U.S. Patent and Trademark Office**

P.O. Box 1451

Alexandria, VA 22313-1451

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

PAUL WARNER and)	
BROTHERS OF THE WHEEL M.C.)	
EXECUTIVE COUNCIL, INC.)	Cancellation No.: 92059164
Petitioner,)	
)	
v.)	Mark: BROTHERS OF THE WHEEL
)	
GERALD R. MOLLOHAN and)	Registration No.: 4299480
BROTHERS OF THE WHEEL)	Date Registered: March 05, 2013
Respondent)	

**RESPONDENTS' BRIEF AND MOTION FOR DISMISSAL OF PETITIONERS'
AMENDED RESPONSE TO MOTION TO DISMISS, MOTION TO CONSOLIDATE
WITH PENDING CASE AND NOTICE OF APPEARANCE OF COUNSEL
AND DISCLOSURES**

INTRODUCTION

COMES NOW Registrant and Respondent, Gerald R. Mollohan, Pro Se *et al*, owner of Trademark Registration Number 4299480 for "BROTHERS OF THE WHEEL", Classification 026 EMBROIDERED PATCHES to hereby notify the Board (TTAB) of his "RESPONDENTS' BRIEF AND MOTION FOR DISMISSAL OF PETITIONERS' RESPONSE TO MOTION TO DISMISS, MOTION TO CONSOLIDATE WITH PENDING CASE AND NOTICE OF APPEARANCE OF COUNSEL" AND TO OFFER DISCLOSERS.

The petitioner abandoned his trademark, failed to provide proof that his petition of cancellation was served on the registrant and respondent per Trademark Trial and Appeal Board Manual of Procedure (TBMP), Trademark Laws. Further, Attorney RICHARD J. LINDROTH is not qualified nor is he authorized to represent anyone before this most honorable Court/Board per 37 CFR § 11.7 of Trademark Regulations, which stipulate that a licensed attorney must

“register” and complete, and examination to qualify to practice before this honorable Court/Board. Additionally, Petitioner Warner is not authorized nor qualified to represent a Corporation in any legal matter and thus, this matter should be denied and the petitioner’s trademark 2926222 should be cancelled immediately.

FACTS

- 1) Petitioner Paul Warner was aware of the facts and laws when he filed this petition for cancellation and that he is not qualified to appear or practice Trademark Law before the Trademark Trial And Appeal Board (TTAB) or any Court for that matter, and represent a corporation per Trademark Trial And Appeal Board Manual Of Procedure (TBMP) Latest edition, 37 CFR § 2.19(b), § 10.40, § 11.14 and other applicable rules of this most honorable Court. Both corporate officers and petitioners PAUL D. WARNER (President), RAY EDWIN CAREY (Vice President) and their enterprise “BROTHERS OF THE WHEEL M.C. EXECUTIVE COUNCIL, INC.” are named defendants in Civil Action 2:14-cv-15592 filed 04/30/14 in The U.S. District Court for The Southern District of West Virginia at Charleston and defending the following counts; “NAKED LICENSING” and “TRADEMARK CANCELLATION”. The Plaintiff in Civil Action 2:14-cv-15592, Frank J. Visconi, has filed a Motion for Default Judgment in that matter and when successful, the petitioner’s trademark number 2926222 will be cancelled. Petitioner Paul Warner and his enterprise (Executive Council) have abandoned trademark number 2926222 per complaints filed in U.S. District Court and the overwhelming evidence of “Naked Licensing Doctrine” filed by Mr. Visconi in Civil Action 2:14-cv-15592. This Court should agree and deny this petition to cancel. Per evidence now in

U.S. District Court records and motions, petitioner in this matter is likely not to own any trademark at all. It is likely that his one trademark number 2926222 will be cancelled in U.S. District Court in Charleston, West Virginia in Civil Action 2:14-cv-15592 and Civil Action 2:13-cv-32251 filed 12/16/2013. Petitioners Trademark Number 2926222 is pending cancellation in the Trademark Trial and Appeal Board Cancellation Number 92059292 and Number 92056674.

- 2) Petitioner Paul Warner and Attorney Richard J. Lindroth have filed their “PETITIONERS’ RESPONSE TO MOTION TO DISMISS, MOTION TO CONSOLIDATE WITH PENDING CASE AND NOTICE OF APPEARANCE OF COUNSEL” (Prosecution History #9 - 06/20/2014) knowing that it will be obvious to all that the petitioners commenced these proceedings before this Court merely for the purpose of harassing or maliciously injuring the respondents per 37 CFR § 10.40 (b) (1) (2) (3) (c). Additionally prosecution history #9 filed 06/20/2014 appears to be fabricated and frivolous.
- 3) Petitioners’ “PETITIONERS’ RESPONSE TO MOTION TO DISMISS, MOTION TO CONSOLIDATE WITH PENDING CASE AND NOTICE OF APPEARANCE OF COUNSEL” (Prosecution History #9 - 06/20/2014) is not presented correctly per Trademark Trial and Appeal Board Manual of Procedure (TBMP) latest edition and in violation of Trademark Trial and Appeal Board Manual of Procedure (TBMP) Chapter 502.02 37 CFR § 2.126(a)(5) § 2.123(g)(2) and Chapter 101.02 Federal Rules 37 CFR § 2.122(a) Rules of Evidence: *“The rules of evidence for proceedings before the Trademark Trial and Appeal Board are the Federal Rules of Evidence, the relevant provisions of the Federal Rules of Civil Procedure, the relevant provisions of Title 28 of*

the United States Code, and the provisions of this Part of Title 37 of the Code of Federal Regulations”.

- 4) U.S. District Court Judge in Charleston, West Virginia dismissed Civil Action 11-cv-00104 by Order of the Court and further Ordered Removed Civil Action 11-cv-00104 from the Court Docket on February 19, 2014. An attempted appeal by Petitioner Warner and Attorney Lindroth has been unsuccessful and appears to have fallen on deaf ears. This Registrant and Respondent made numerous Post-Trial Motions (EXHIBIT “C”) in Civil Action 2-cv-00104. The Court of Appeals for the Fourth Circuit has issued three letters **EXHIBIT “A”** to the Court indicating they are unable to consider the appeal matters of the petitioners, until all Registrant and Respondents’ Post-Trial Motions are ruled on. Thus the Fourth Circuit Court of Appeals has yet to accept and/or review any matters concerning Civil Action 2:11-cv-00104. The U.S. District Court did order the matter of Civil Action 2:11-cv-00104 dismissed and removed from the docket, hence there appears to be nothing to continue on for either party, EITHER IN U.S. DISTRICT COURT OR FOURTH CIRCUIT COURT OF APPEALS.
- 5) Petitioners’ are in violation of the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations (“Trademark Rules”).
- 6) Registrant and Respondent GERALD R. MOLLOHAN is the owner of three registered copyrights; BROTHERS OF THE WHEEL M.C. NOMAD – Registration Number VA 1-908-258 Effective date of registration: December 14, 2013 2-D Author Created Artwork. BROTHERS OF THE WHEEL – Registration Number TXu 1-857-219 Effective date of registration: September 6, 2012 Author Created Text. BROTHERS OF THE WHEEL

M.C. BY-LAWS – REGISTRATION NUMBER TX 7-800-119 Effective date of registration: November 7, 2013 Author Created Text.

- 7) The registrant and respondent have other trademark and copyright application ownership.
- 8) The petitioners are in violation of the Naked Licensing Doctrine in that they “lack any quality control” of the mark per requirements of Section 45 of the Lanham Act.
- 9) Tyrone Craven, Lead Paralegal Specialist issued Letter and Mailed: May 31, 2014
Stating that “Proceedings are suspended pending disposition of respondent’s motion to dismiss (filed May 14, 2014)” **EXHIBIT “B”**

10) Attorney RICHARD J. LINDROTH is not qualified nor is he authorized to represent anyone before this most honorable Court/Board per 37 CFR § 11.7 of Trademark Regulations, which stipulate that a licensed attorney must “register” and complete, and examination to qualify to practice before this honorable Court/Board. Additionally, Petitioner Warner is not authorized nor qualified to represent a Corporation in any legal matter.

ARGUMENT

Petitioners’ response number “1”, even if partly true, appears to the respondents to be without merit and infringing on the respondents registered trademark and copyrights. The Petitioners claim to have started with subject mark in 1993 according to records on file at the USPTO, in this Court and in other Court Records.

In response number “2” the petitioners make another false statement, as respondent Mollohan retired with full legal rights and entitlements to the petitioners name and all logo designs, which at the time was not a registered trademark for anyone, but merely an unknown person’s name and design.

A group in Arkansas, which this respondent previously submitted as evidence, first used the term “Brothers of the Wheel” in 1884. There also exists another “Club” using the term “BOTW” and “Brothers of the Wheel” claiming to have first used name and acronym in 1972. They are located in Anderson, Indiana. There are others using the same acronym (BOTW) to identify themselves. “Bank of the West” is just one of many throughout the United States and research shows that there are more in other countries. There is also a bicycle club using the name “Brothers of the Wheel” and there are others on Internet social media.

Petitioners’ response number “3” is without merit as respondent organized a Motorcycle Club in the State of Washington on January 1, 2000 using his own trademark and own name which are now registered trademarks and registered copyrights completely owned by respondent Mollohan.

Petitioners’ response number “4” appears to the respondents to mean nothing to him and should mean nothing to this most honorable Court, as that matter, as stated previously mentioned has been dismissed by U.S. District Court and removed from that Court’s docket.

The Petitioners continue to infringe on the respondents marks and copyrights. Respondents have filed legal action in U.S. District Court in Charleston, West Virginia. Respondents previously provided this honorable Court, exhibits of his U.S. District Court complaints and records concerning those matters naming Petitioner Warner and his enterprise as defendants.

Petitioners’ response number “5” appears to the respondents to mean nothing to him and should mean nothing to this most honorable Court as that matter, as stated previously, has been dismissed by U.S. District Court and removed from that Court’s docket. Petitioners appeal in that matter has fallen on deaf ears.

The Petitioners continue to infringe on the respondents marks and copyrights. Respondents filed legal action in U.S. District Court in Charleston, West Virginia. Respondents previously provided exhibits to this most honorable Court.

Petitioners' response number "6" is without merit as respondents previously explained. Furthermore, Attorney Lindroth is not qualified nor is he authorized to represent anyone before this most honorable Court/Board **per 37 CFR § 11.7 of Trademark Regulations**, which stipulate that a licensed attorney must "register" and complete, and examination to qualify to practice before this honorable Court/Board. Additionally, **Petitioner Warner is not authorized nor qualified to represent a Corporation in any legal matter.**

Petitioners' response to number 7, number 8, number 9, number 10, number 11, number 12, number 13, number 14 and number 15, is that the petitioners' are totally out of line and again provide statements that are without merit. Respondents have always provided accurate and honest details when making applications for both Trademarks and Copyrights. The petitioners, on the other hand, have not. The petitioners have provided fraudulent affidavits and false information to the Courts and false information and details to the USPTO and TTAB. Additionally prosecution history #9 filed 06/20/2014 appears to be fabricated, frivolous and without merit.

CONCLUSION

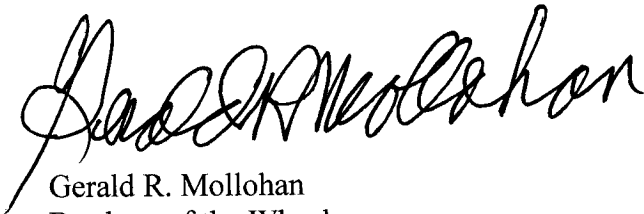
For the foregoing facts, evidence and valid reasons, Registrant and Respondents' urge this most honorable Court's approval of "RESPONDENTS' BRIEF AND MOTION FOR DISMISSAL OF PETITIONERS' AMENDED RESPONSE TO MOTION TO DISMISS, MOTION TO CONSOLIDATE WITH PENDING CASE AND NOTICE OF APPEARANCE OF COUNSEL" and to cancel petitioners' trademark.

In the alternative, Registrant and Respondents' urge and request that this most honorable Court to Strike and find as moot "PETITIONERS' AMENDED RESPONSE TO MOTION TO DISMISS, MOTION TO CONSOLIDATE WITH PENDING CASE AND NOTICE OF APPEARANCE OF COUNSEL"(Prosecution History Document #9 entered 06/20/2014.)

DISCLOSURES

List of Numerous Post-Trial motions in the matter of Civil Action 2:11-cv-00104 filed by respondent Gerald R. Mollohan (**EXHIBIT "C"**).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald R. Mollohan", written in a cursive style.

Gerald R. Mollohan
Brothers of the Wheel
P.O. Box 507
St.Albans, West Virginia 25177-0507
Pro Se, *et al*
Registrant and Respondent

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2014, a copy of the foregoing

**“RESPONDENTS’ BRIEF AND MOTION FOR DISMISSAL OF
PETITIONERS’ AMENDED RESPONSE TO MOTION TO DISMISS,
MOTION TO CONSOLIDATE WITH PENDING CASE AND NOTICE OF
APPEARANCE OF COUNSEL
AND DISCLOSURES”**

was sent by U.S. Mail, postage prepaid to:
PAUL WARNER and
BROTHERS OF THE WHEEL M.C. EXECUTIVE COUNCIL, INC.
PO BOX 782
MADISON, WEST VIRGINIA 25130
UNITED STATES

and

RICHARD J. LINDROTH
PO BOX 331
ELEANOR, WV 25070

A handwritten signature in black ink, appearing to read "Gerald R. Mollohan", is written over a horizontal line.

**GERALD R. MOLLOHAN, Pro Se et al
BROTHERS OF THE WHEEL
PO BOX 507
ST.ALBANS, WEST VIRGINIA 25177-0507
United States of America**

INDEX OF EXHIBITS PROVIDED BY:

GERALD R. MOLLOHAN

OWNER: “BROTHERS OF THE WHEEL”

TTAB Cancellation No. 92059164

“A” – Letters to U.S. District Court involving Civil Action Case

Number 2-cv-00104 (from Fourth Circuit Court of Appeals.)

“B” – Suspension Letter of these proceedings filed May 14, 2014.

“C”- Respondent Mollohan’s numerous POST TRIAL MOTIONS involving

U.S. District Court Case Number 2-cv-00104.

EXHIBIT “A”

PRESENTED BY:

GERALD R. MOLLOHAN

Mark: BROTHERS OF THE WHEEL

Cancellation No.: 92059164

LETTERS FROM FOURTH CIRCUIT
COURT OF APPEALS

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
LEWIS F. POWELL, JR. UNITED STATES COURTHOUSE ANNEX
1100 EAST MAIN STREET, SUITE 501
RICHMOND, VIRGINIA 23219-3517
WWW.CA4.USCOURTS.GOV**

**PATRICIA S. CONNOR
CLERK**

**TELEPHONE
(804) 916-2700**

March 26, 2014

Teresa L. Deppner, Clerk
U.S. District Court
Southern District of West Virginia
300 Virginia Street East
Charleston, WV 25301

**Re: Brothers of the Wheel M.C. Executive Council, Inc. v. Gerald R.
Mollohan, et al.**
2:11-cv-00104

Dear Ms. Deppner:

Review of the district court docket discloses that the district court is considering multiple motions under Fed. R. Civ. P. 50(b)(for judgment), 52(b)(to amend or make additional findings), 59(to alter or amend judgment or for new trial), or 60 (to vacate) filed within 28 days of entry of judgment. Under Fed. R. App. P. 4(a)(4), a notice of appeal filed after entry of judgment but before disposition of such motions becomes effective upon entry of an order(s) disposing of the last such motion.

Review of the district court docket also discloses that a motion to extend the appeal period was filed within 30 days of expiration of the appeal period and is pending in the district court under Fed. R. App. P. 4(a)(5).

This court will treat the notice of appeal as filed as of the date the district court disposes of these motions, and will docket the appeal following disposition of the motions. Please notify this court upon entry of an order(s) disposing of the motions.

If a party wishes to appeal the district court's disposition of the motions, a notice of appeal or amended notice of appeal must be filed within the time prescribed for appeal, measured from entry of the order(s) disposing of the last such motion.

Yours truly,

/s/ Ashley B. Webb

Ashley B. Webb

cc: Gerald R. Mollohan
Ralph C. Buss, Esq.
Richard J. Lindroth, Esq.

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
LEWIS F. POWELL, JR. UNITED STATES COURTHOUSE ANNEX
1100 EAST MAIN STREET, SUITE 501
RICHMOND, VIRGINIA 23219-3517
WWW.CA4.USCOURTS.GOV**

**PATRICIA S. CONNOR
CLERK**

**TELEPHONE
(804) 916-2700**

April 24, 2014

Teresa L. Deppner, Clerk
U.S. District Court
Southern District of West Virginia
300 Virginia Street East
Charleston, WV 25301

**Re: Brothers of the Wheel M.C. Executive Council, Inc. v. Gerald R.
Mollohan, et al.**
2:11-cv-00104

Dear Ms. Deppner:

By letter dated March 26, 2014, notice was sent to your court indicating that an appeal had been received by this office but would not be docketed until action by the district court.

Please continue to update this court as to the status of this case as necessary.

Thank you for your assistance.

Yours truly,

/s/ Ashley B. Webb

Ashley B. Webb

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
LEWIS F. POWELL, JR. UNITED STATES COURTHOUSE ANNEX
1100 EAST MAIN STREET, SUITE 501
RICHMOND, VIRGINIA 23219-3517
WWW.CA4.USCOURTS.GOV**

**PATRICIA S. CONNOR
CLERK**

**TELEPHONE
(804) 916-2700**

June 20, 2014

Teresa L. Deppner, Clerk
U.S. District Court
Southern District of West Virginia
300 Virginia Street East
Charleston, WV 25301

**Re: Brothers of the Wheel M.C. Executive Council, Inc. v. Gerald R.
Mollohan, et al.**
2:11-cv-00104

Dear Ms. Deppner:

By letter dated March 26, 2014, and follow-up letters dated April 24, 2014 and May 22, 2014, notice was sent to your court indicating that an appeal had been received by this office but would not be docketed until action by the district court.

Please continue to update this court as to the status of this case as necessary.

Thank you for your assistance.

Yours truly,

/s/ Ashley B. Webb

Ashley B. Webb

EXHIBIT “B”

PRESENTED BY:

GERALD R. MOLLOHAN

Mark: BROTHERS OF THE WHEEL

Cancellation No.: 92059164

LETTER FROM TTAB – PROCEEDINGS
SUSPENDED

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Tdc

Mailed: May 31, 2014

Cancellation No. 92059164

Brothers of the Wheel MC Executive
Council, Inc.

v.

Gerald R. Mollohan aka Brothers of
the Wheel

Tyrone Craven, Lead Paralegal Specialist:

Proceedings are suspended pending disposition of respondent's motion to dismiss (filed May 14, 2014). Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration. *See* Trademark Rule 2.127(d).

This suspension order does not toll the time for either party to respond to any outstanding discovery or to serve expert or pretrial disclosures.

The motion will be decided in due course.

EXHIBIT “C”

PRESENTED BY:

GERALD R. MOLLOHAN

Mark: BROTHERS OF THE WHEEL

Cancellation No.: 92059164

POST TRIAL MOTIONS

Case 2:11-cv-00104

(Not all numerous motions included)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

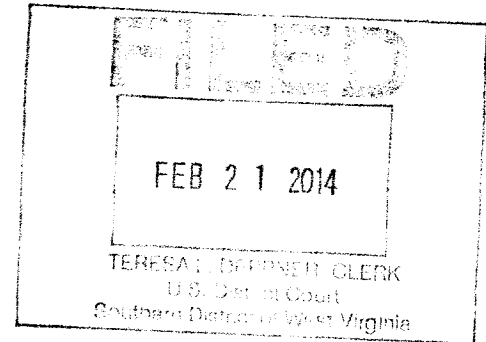
BROTHERS OF THE WHEEL M.C.
EXECUTIVE COUNCIL, INC.,

Plaintiffs,
CIVIL ACTION
No.: 2:11-cv-00104

v.

GERALD R. MOLLOHAN, et al.

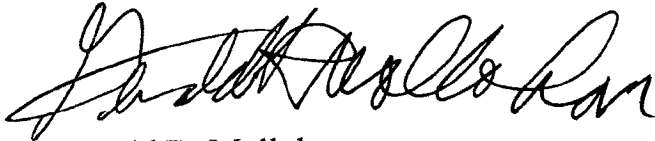
Defendants.



MOTION FOR STAY ON FINAL JUDGMENT ORDER

COMES NOW the Defendant Gerald R. Mollohan, *et al* to request a Motion for Stay on Final Judgment Order (Document Number 139) Pending Defendant's Appeal to the Fourth Circuit Court of Appeals in accordance with Federal Rules of Civil Procedure, Rule 8(a) which states "Motion For Stay" (1) "Initial Motion in the District Court. A party must ordinarily move first in the district court for the following relief:" (A) a stay of the judgment or order of a District Court pending appeal; (B) approval of a supersedeas bond; or (C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gerald R. Mollohan', written in a cursive style.

Gerald R. Mollohan
Defendant *Pro Se*

CERTIFICATE OF SERVICE

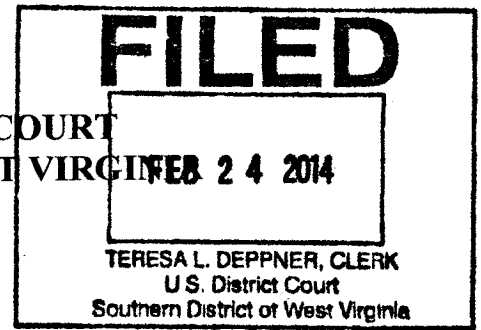
I certify that on the 20th day of February, 2014 I have served a true and exact copy of the Defendant's "MOTION FOR STAY ON FINAL JUDGMENT ORDER"

Richard J. Lindroth, 4614 Kanawha Avenue, South Charleston, West Virginia 25309 depositing same in the United States mails, first class postage prepaid, addressed as stated.

A handwritten signature in black ink, appearing to read "Gerald R. Mollohan", written over a horizontal line.

Gerald R. Mollohan

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**



**BROTHERS OF THE WHEEL M.C.
EXECUTIVE COUNCIL, INC.**

CIVIL ACTION
Plaintiff, **No. 2:11-cv-00104**

-v-

GERALD R. MOLLOHAN, Pro Se, et al

Defendants.

**DEFENDANT'S MOTION TO SET ASIDE FINAL JUDGEMENT
ORDER**

Defendants hereby move this Court To Set Aside Final Judgment Order

(Document 139). RULE 60. RELIEF FROM A JUDGMENT OR ORDER

ARGUMENT

There are many grounds on which a party may base its motion from a judgment or order. (b)(1)(2)(3)(4)(5)(6).

(Rule (60)(c)(1) a motion under Rule 60(b) must be made within a reasonable time – and for reason (1),(2), and (3) no more than a year after the entry of judgment or order of the date of the proceeding.

Only proper and timely filed post-judgment motions suspend the commencement of the time to appeal(Fed. R. App. P. 4(a)(4). A post-trial motion need not have been correctly titled to fall within the scope of Fed. R. 4(a)(4); rather, the courts will look to the substance of the motion(Elder-Keep v. Aksamit, 460 F.3d 979, 985 (8th Cir. 2006); Sanders v. Clemco Industries, 862 F.2d 161, 168-169(8th Cir. 1988)

The case where Party Newly Discovers Evidence:

Motion for new trial on the grounds of newly discovered evidence must meet the following requirements before it can be granted:

The newly discovered evidence must be as would probably change the result on a new trial;

- (1) The newly discovered evidence must have been discovered since the trial;
- (2) The newly discovered evidence must be of such a nature that it could not have been discovered before trial by due diligence;
- (3) The newly discovered evidence must be material; and

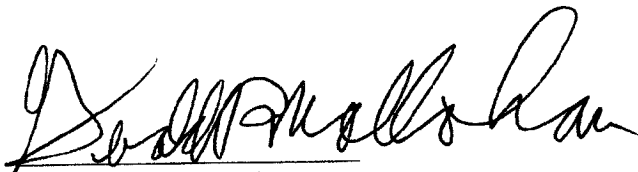
The newly discovered evidence must not be merely cumulative or impeaching.” Patrick v. Sedwick, 413 P.2d 169 (Alaska 1966).

CONCLUSION

FINAL JUDGMENT ORDER (Document 139), the court did not indicate dismissed “with prejudice” or “without prejudice”. Defendants believe that is perhaps a mistake on the part of the Court. If a case is dismissed without prejudice, defendant’s can file the same case and not have to appeal. If dismissed WITH prejudice, then the case is over and defendants would have to file a new or different case.

The newly discovered evidence must have been discovered since the trial; the newly discovered evidence must be of such a nature that it could not have been discovered before trial by due diligence.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald R. Mollohan", written over a horizontal line.

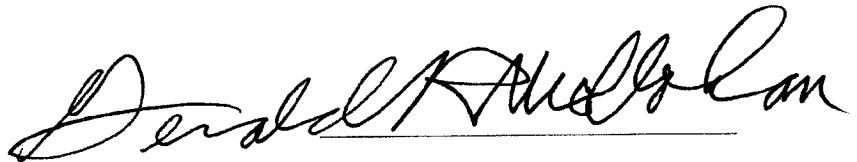
Gerald R. Mollohan
Defendant
Pro Se, *et al*

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2014, a copy of the foregoing
“DEFENDANT’S MOTION TO SET ASIDE FINAL JUDGEMENT ORDER”

in Civil Action No. 2:11-cv-00104 was sent by

First Class U.S. Mail, Postage prepaid to,
Richard J. Lindroth, 4614 Kanawha Avenue,
South Charleston, West Virginia 25109.

A handwritten signature in black ink, appearing to read "Gerald R. Mollohan", written over a horizontal line.

Gerald R. Mollohan

Pro Se, *et al*

Defendant

Civil Action No. 2:11-cv-00104

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

**BROTHERS OF THE WHEEL M.C.
EXECUTIVE COUNCIL, INC.**

Plaintiff,

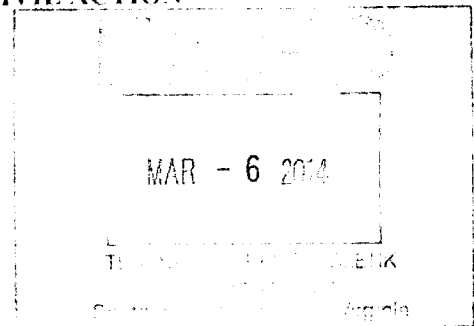
No. 2:11-cv-00104

CIVIL ACTION

-v-

GERALD R. MOLLOHAN, Pro Se, et al

Defendants.



**DEFENDANT'S MOTION FOR NEW TRIAL
ALTERING OR AMENDING A JUDGMENT**

Pursuant to Federal Rules of Civil Procedure (FRCP) Rule 59 – New Trial: Altering or Amending a Judgment, § (a)(2) *Further Action After a Nonjury Trial* and Rule 52 – Findings and Conclusions by the Court: Judgment on Partial Findings, § (a)(5) *Questioning the Evidentiary Support*, and §(6) *Setting Aside the Findings*, Defendant hereby moves this Honorable Court to set aside the findings set forth in the Honorable Judge Thomas E. Johnston's FINAL JUDGMENT ORDER of February 19, 2014 (Document 139).

ARGUMENT

FRCP Rule 59(a)(2) states that “after a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment”.

FRCP Rule 52(a)(5) states that “a party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or

move for partial findings” and (a)(6) states “Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court’s opportunity to judge the witnesses’ credibility”.

Further, under Federal Rules of Civil Procedure “Post-Trial Motions”, section 3 states “The Case where a Party Newly Discovers Evidence: “[A] motion for new trial on the grounds of newly discovered evidence must meet the following requirements before it [can] be granted: (1) [The newly discovered evidence] must be as would probably change the result on a new trial; (2) [The newly discovered evidence] must have been discovered since the trial; (3) [The newly discovered evidence] must be of such a nature that it could not have been discovered before trial by due diligence; (4) [The newly discovered evidence] must be material; and (5) [The newly discovered evidence] must not be merely cumulative or impeaching.”

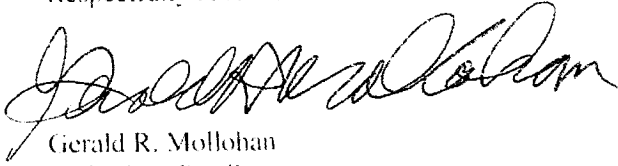
EVIDENCE

Defendant submits EXHIBIT “A”, United States Copyright Office Certificate of Registration, Registration Number **TX 7-800-119** as evidence that is material to this case but not considered at the February 14, 2014 Hearing. Said Copyright Registration grants the Defendant Copyrights to the Plaintiff’s published By-Laws effective November 7, 2013. The Defendant received this copyright in the mail on or about March 1, 2014.

CONCLUSION

WHEREFOR, given the introduction of above evidence, Defendant asks this Honorable Court to AMEND its findings stated in the Final Judgment Order of February 19, 2014. The Plaintiffs are in violation of Defendants intellectual property and 17 U.S.C. § 501, 17 U.S.C. § 506(a)(1)(A); 18 U.S.C. § 2319(b); 17 U.S.C. § 506(1)(B); 18 U.S.C. § 2319(c); 15 U.S.C. § 1114(1) § 1125(a)(d) § 43(c)(d). Defendants request a common law injunction restraining the Plaintiffs activities. Trademark Registration Number 4,299,480 is owned by defendant Mollohan, EXHIBIT “B” Copyright Registration Number TXu 1-857-219 is owned by defendant Mollohan, EXHIBIT “C”

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald R. Mollohan". The signature is fluid and cursive, with the first name "Gerald" being the most prominent part.

Gerald R. Mollohan
Defendant *Pro Se*

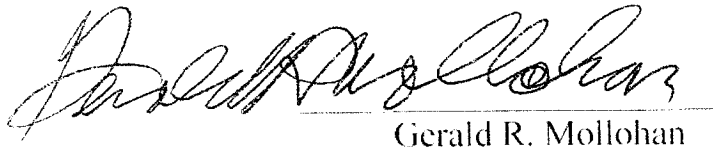
CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2014, a copy of the foregoing

**“DEFENDANT’S MOTION FOR NEW TRIAL ALTERING OR
AMENDING A JUDGMENT”**

In Civil Action No. 2:11-cv-00104 was sent by
First Class U.S. Mail, Postage prepaid to,

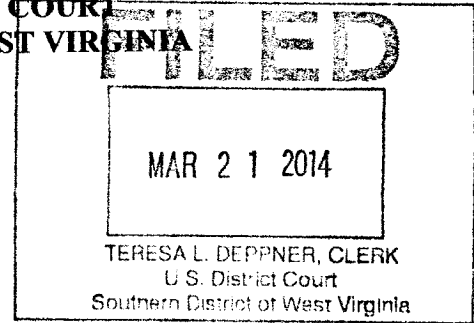
Richard J. Lindroth, 4614 Kanawha Avenue,
South Charleston, West Virginia 25109

A handwritten signature in black ink, appearing to read "Gerald R. Mollohan", is written over a horizontal line.

Gerald R. Mollohan

Pro Se, *et al*

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**



**BROTHERS OF THE WHEEL M.C.
EXECUTIVE COUNCIL, INC.**

Plaintiff,

**CIVIL ACTION
No. 2:11-cv-00104**

-v-

GERALD R. MOLLOHAN, Pro Se, et al

Defendants.

MOTION TO AMEND FINAL JUDGMENT ORDER

INTRODUCTION

Defendant Gerald R. Mollohan files this Motion to Amend Order and Judgment pursuant to Fed. R. Civ. P. 52(a)(b) and respectfully asks the Court to amend its Final Judgment Order.

The entry of judgment starts the running of the deadlines for post-judgment motions. Rule 59(b) ("A motion for new trial must be filed no later than thirty (30) days after the entry of judgment")

FACTS

1. The defendant owns registered trademark number 4,299,480 for "BROTHERS OF THE WHEEL" (Exhibit "A")

2. The defendant owns registered copyright number TX 7-800-119 “BROTHERS OF THE WHEEL M.C. BY-LAWS” (Exhibit “B”)
3. The defendant owns registered copyright number TXu 1-857-219 for “BROTHERS OF THE WHEEL” (Exhibit “C”)
4. On February 19, 2014, the Court issued its Final Judgment Order (Document 139) and shown on Page 2 of 2 (Page ID #: 1515) is the following mandate; “Use” of the aforesaid logo and word marks by Defendant Mollohan includes the use by any other person at the direction of Defendant Mollohan and shall include use, in any, manner, on the Internet.
5. There are a total of six mandates. Footnote 1 (Page 2 of 2 Page ID #: 1515) states that “The Court observes that the final three mandates listed herein appear to have been satisfied by the parties since the entry of the Memorandum Opinion and Order and Judgment Order on November 14, 2012. (ECF 69, 69-1; 71; 87.)
6. In related Civil Action No.: 2:13-cv-32251, the plaintiffs in this case are charged with various violations of the Lanham Act and defendant Mollohan believes he has stated a claim for which relief can be granted in related case. Perhaps a default judgment in favor of Gerald R. Mollohan will be entered in that case, since the answers were not filed in a timely manner as required.
7. The plaintiffs mark is at the United States Trademark Trial And Appeal Board (TTAB) and “Application Status: Cancellation Pending Registration #: 2926222.” Cancellation Number: 92056674.
8. Defendants trademark application at U.S. Patent and Trademark Office (USPTO) for BOTWNOMADS.COM status date is March 10, 2014 and status reads “A non-final Office Action has been sent (issued) to the applicant after review of the Statement of Use. This is a letter from the examining attorney requiring additional information and/or making an

initial refusal. The applicant must respond.” The applicant (defendant) did in fact response and is expected to receive a “Statement of Use.” and complete and principal registration. “Notice of Allowance Date: November 19, 2013.” Other Trademark Applications for the defendants were applied for with help of other individuals in different parts of the United States of America, but none were applied for in West Virginia, Kentucky and Ohio, per Court Order. This was all verified at the Court hearing held on February 14, 2014.

ARGUMENT

Under Fed. R. Civ. P. 59 (e), a party may file a motion to alter or amend a judgment no later than 28 days after entry of the judgment. Motions to amend or alter the judgment should be granted when there exists “a manifest error of law or fact, so as to enable the court to correct its own errors and thus avoid unnecessary appellate procedures.” *Meghani v. Shell Oil Co.*, 2000 U.S. Dis. LEXIS 17402 *2, (S.D. Tex. Aug 24, 2000) (citing *Divane v. Krull Elec. Co., Inc.*, 194 F.3d 845, 848 (7th Cir. 1999) (internal citations omitted); *see also Kyle v. Texas*, 2006 WL 3691204(W.D. Tex. Oct. 31, 2006)(granting a motion to reconsider under Fed. R. Civ. P. 59(e) and reversing the court’s previous denial of a motion to remand based on a manifest error of law). A court has discretionary authority to amend its prior decision. *See Weber v. Roadway Exp. Inc.*, 199 F.3d270, 276 (5th Cir. 2000). Fed. R. Civ. P. 60(a) further provides that “the court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice.” Under Fed. R. Civ. P. 60(b), the Court may relieve a party from a final judgment or order if a mistake was made or any other reason that justifies relief.

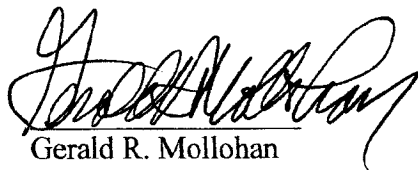
To the extent that the Court’s Order Concerning Pending Motions was intended to incorporate or substitute as findings of fact and conclusions of law, Defendant asks the Court to amend its findings and conclusions to correct manifest errors of law and fact consistent with the arguments in this motion. Under Fed. R. Civ. P. 52(b), a motion to amend findings of fact and conclusions of law must be predicated on the need to correct to correct manifest errors of law or fact. Fontenot v. Mesa Petroleum Co., 791 F. 2d 1207, 1219 (5th Cir. 1986). A district court should correct its findings and conclusions when its judgment is not guided by sound legal principles such as: 1) when a court relies on clearly erroneous fact findings; 2) relies on erroneous conclusions of law; or 3) misapplies its factual or legal conclusions. Alcatel U.S.A., Inc. v. DGI Techs, Inc., 166 F.3d 772, 790(5th Cir. 1999).

CONCLUSION

The defendant respectfully requests that mandate number three (3) which now reads “Use” of the aforesaid logo and word marks by Defendant Mollohan includes the use by any other persons at the direction of Defendant Mollohan and shall include use, in any manner, on the Internet” be stricken.

This injunction strikes the defendant’s as patently and vastly overboard, and therefore clearly unconstitutional. Even if a narrow injunction of constitutionally unprotected speech – such as an injunction against repeating statements that have been found to be libelous or infringing – might be constitutional (a matter that remains unresolved), an injunction against all Internet speech about a particular registered trademark (owned by defendants and two registered copyrights (owned by the defendants) by the defendant Mollohan can’t be squared with the First Amendment. The defendant owns a registered trademark and two registered copyrights to the word mark “BROTHERS OF THE WHEEL” and included in the Court’s mandate and defendants hereby request that mandate be stricken from the Final Judgment Order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gerald R. Mollohan', written in a cursive style.

Gerald R. Mollohan
Defendant
Pro Se, *et al*

CERTIFICATE OF SERVICE

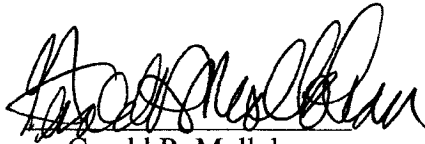
I hereby certify that on March 19, 2014, a copy of the foregoing

“MOTION TO AMEND FINAL JUDGMENT ORDER”

In Civil Action No. 2:11-cv-00104

Was sent by First Class U.S. Mail, Postage prepaid to,

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Gerald R. Mollohan
Defendant Pro Se, et al
Civil Action No. 2:11-cv-00104